

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUN 14 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Interconnection and Resale ) CC Docket No. 94-54  
Obligations Pertaining to )  
Commercial Mobile Radio Services )

To: The Commission

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COMMENTS OF  
THE SOUTHERN COMPANY

THE SOUTHERN COMPANY

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## **EXECUTIVE SUMMARY**

Southern opposes imposing mandatory resale requirements on interconnected SMR licensees. Consistent with the Budget Act, Southern believes that the distinctions between the SMR industry and other CMRS providers, such as limited spectrum capacity to accommodate resellers, warrant FCC abstention from imposing the resale requirement on interconnected SMR providers.

Southern agrees with the Commission that it is too premature to adopt a policy or rules requiring direct CMRS-to-CMRS interconnection at this time because technology has not been developed to facilitate such interconnection. Nevertheless, Southern urges the Commission to include in its general interconnection policy a requirement that wide-area SMR licensees cannot refuse to enter into roaming arrangements with another licensee, charge excessively high rates for roaming capability or impose unreasonable terms in a roaming agreement, and at a minimum make such actions trigger the Title II complaint and hearing processes.

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**COMMENTS OF  
THE SOUTHERN COMPANY**

The Southern Company ("Southern") by its attorneys and pursuant to Section 1.415 of the Federal Communications Commission's Rules, submits these Comments in response to the Second Notice of Proposed Rule Making ("Second NPRM") released April 20, 1995 in the above-captioned proceeding.<sup>1/</sup>

**STATEMENT OF INTEREST**

1. Southern is a licensee of numerous Specialized Mobile Radio ("SMR") stations throughout Alabama, Georgia, the panhandle of Florida and southeastern Mississippi.<sup>2/</sup>

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<sup>1/</sup> Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Notice of Proposed Rule Making, FCC 95-149, 60 Fed. Reg. 20949 (April 28, 1995).

<sup>2/</sup> Southern is an electric utility holding company which wholly owns the common stock of five electric utility (continued...)

As a wide-area, interconnected SMR licensee, Southern's SMR system will likely fall within the definition of a Commercial Mobile Radio Service ("CMRS") provider as set forth in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").<sup>3/</sup> Southern participated in the first stage of this proceeding, commenting on the equal access and interconnection issues. Southern indicated that it anticipates providing equal access to the interexchange carrier for its subscribers, and supported the Commission's proposal to impose equal access obligations on all CMRS providers. Southern also supported the concept of CMRS interconnection, especially SMR-to-SMR interconnection. Southern stated that it recognized the complex technical issues involved in CMRS-to-CMRS interconnection, and warned the Commission to use caution when promulgating rules for these services because of these technical complexities and

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<sup>2/</sup>(...continued)

operating companies, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and a system service company, Southern Company Services, Inc., which together operate an integrated electric utility system which serves over 11 million consumers in a contiguous area of 122,000 square miles, including most of the State of Alabama, almost all of the State of Georgia, the panhandle of Florida, and 23 counties in southeastern Mississippi. Southern is in the process of improving its mobile radio communications and is implementing a wide-area digitally enhanced 800 MHz system.

<sup>3/</sup> However, Southern's facilities are grandfathered until August 1996.

the prospect of creating unnecessary costs for CMRS providers, especially existing SMR licensees.

2. Southern did not comment on the resale issue, and appreciates this opportunity to do so, as well as to present its views regarding interconnection and roaming. Southern is pleased to submit the following Comments for the Commission's consideration.

#### COMMENTS

I. The Commission Should Not Impose Resale Obligations on the SMR Service

3. By way of background, Southern is developing its interconnected, wide-area SMR network which will compete directly with other wide-area SMR licensees in the southeastern United States. Once fully operational, Southern's facilities-based SMR system will provide enhanced dispatch service to a select group of customers. Its customer base is primarily derived from industrial users like itself with dispatch-oriented requirements. Consequently, while Southern will provide some cellular-like services, it will not focus its services on the cellular/PCS market.

4. Southern believes that imposing resale obligations on the SMR industry as a whole will not necessarily promote competition. Moreover, the limited SMR frequency capacity, in comparison to broadband cellular and PCS capacity, makes resale for wide-area SMR systems practically difficult and in some instances, technically infeasible.

**A. The SMR Industry is Not in a Start-Up Market**

5. Southern understands the Commission's rationale for wanting to impose resale obligations on certain CMRS providers, particularly where the providers already have a headstart advantage in supplying communication services to the public. For example, although the cellular market is well-established and enjoys an existing customer base it had problems in its start-up phase. In this duopoly scenario, the resale obligation worked well to ensure that the second cellular licensee would survive long enough to build its network, and eventually provide competition to the already-constructed and operational wireline cellular carrier. Resale also helped to provide service in the cellular rural areas. Similarly, because the Personal Communications Service ("PCS") licenses are being auctioned at different times and a few licensees such as GTE, APC and Omnipoint received their PCS licenses even earlier due to an award of

a pioneer's preference, there is a potential for PCS providers to have headstart advantages as well. In this instance, imposing a resale obligation on PCS licensees may be a necessary tool to promote competition until the market is fully developed.

6. Southern continues to believe that the SMR service is a distinct market from cellular and PCS. Southern believes that the future of SMR service will continue to focus on dispatch communications. Unlike cellular or PCS, the wide-area SMR systems, at least in the analog mode, are fully developed and operational. Except for the completion of PR Docket No. 93-144 which will only liberalize current SMR rules and codify the licensing scheme by which existing wide-area SMR licensees operate, spectrum for SMR-type services is almost completely licensed. This process has been on-going for over ten years, and the most recent initiative, to establish wide-area digital systems, is only a natural evolution in this market. This development is not analogous to the start-up of a new service such as cellular or PCS where the FCC acts essentially as a gatekeeper to a few new entrants. Accordingly, Southern sees no need to impose resale obligations on the SMR industry. There are no headstart concerns in the SMR industry since virtually all of the SMR frequencies are licensed and operating. Simply



stated, the reasons for imposing resale obligations on common carriers are absent in the SMR industry. Thus, Southern opposes placing such obligations on the SMR service.

7. Moreover, the resale concept is one borrowed from the wireline industry where anticompetitive practices resulted in large part from the monopoly structure of that market.<sup>4/</sup> Even in the cellular arena, the Commission had to carve out an exception to its resale policy to permit carriers to deny resale capacity to a fully operational facilities-based competitor.<sup>5/</sup> Southern believes that allowing the resale of existing wide-area SMR system capacity severely disadvantages the SMR licensee who took the initiative to complete construction and begin operation of its facilities.<sup>6/</sup> Resale, in essence, can stifle the growth of SMR systems because it will dampen the incentive to invest in new technology, the benefit of which must be offered to competitors via resale.

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<sup>4/</sup> See Second NPRM at 30, ¶ 60.

<sup>5/</sup> See Cellular Resale Order, CC Docket No. 91-33, 6 FCC Rcd 1719 (1991) and 7 FCC Rcd 4006 (1992).

<sup>6/</sup> To avoid instances where there is only one dominant SMR player in a market, resale obligations could be placed on that dominant SMR licensee. Hopefully, however, PR Docket No. 93-144 will result in more than one MTA/BEA licensee per market.

8. Southern believes that resale obligations may possibly be necessary for cellular carriers and the PCS industry, but urges the Commission to recognize the distinctions between various CMRS providers (i.e., cellular, PCS and SMR). As indicated above, the SMR industry is at a different stage of maturity, and has a completely different history of development than cellular or PCS. Moreover, because of these differences, Congress, in the Budget Act, allows distinction in regulation of CMRS providers. The Budget Act specifically states that the Commission may specify by regulation those provisions of Title II which are inapplicable to a service.<sup>7/</sup> Therefore, the Commission has the discretion not to impose resale obligations on interconnected SMR service even though the service is classified as a CMRS. The Commission has exercised this discretion in previous CMRS decisions.<sup>8/</sup> Likewise, the

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<sup>7/</sup> Omnibus Budget Reconciliation Act of 1993, P.L. No. 103-66, § 6002, 107 Stat. 379, 393 (1993).

<sup>8/</sup> See In re Amendment of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Commercial Mobile Radio Service, Second Report and Order, 9 FCC Rcd 1411 (1994) and Third Report and Order, 9 FCC Rcd 7988 (1994). (where the Commission declined to adopt certain Title II regulations for CMRS). See also, In re Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, GN Docket No. 94-33, 59 Fed. Reg. 25432 (May 16, 1994).

Commission should exercise this discretion by not imposing resale obligations on interconnected SMR operators.

9. Furthermore, Southern opposes the Commission's tentative proposal to make resale obligation a condition of the license for interconnected SMR licensees. Southern again appreciates the Commission's rationale for making resale a condition of the license for cellular or PCS carriers, but it is unnecessary for the SMR market.

**B. Limited SMR Capacity Make Resale  
Technically Infeasible**

10. Southern agrees with NABER and OneComm in their initial comments, stating that resale obligations for SMRs are unnecessary and technically problematic.<sup>9/</sup> NABER stated that limited spectrum capacity of SMR licensees makes mandatory resale technically impossible. The SMR industry has a total of 14.0 MHz for 800 MHz services, 5.0 MHz for 900 MHz services and access to 2 MHz for 220 MHz services. With virtually all of the SMR frequencies already licensed in these SMR bands, there is insufficient capacity to give

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<sup>9/</sup> Comments of NABER at 11-12 and OneComm at 21, In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54, 59 Fed. Reg. 35664 (July 13, 1994).

resellers access on this spectrum. Unlike broadband services which were allocated large amounts of spectrum, SMRs are struggling to meet the day-to-day demands of their subscribers. Mandatory reselling will only further exacerbate the problem by giving away capacity which should be devoted to the SMR end user. The lack of spectrum capacity could force traditional SMR customers to seek more expensive service from other mobile service providers who do not traditionally provide dispatch service. Southern is also unique in that a portion of its wide-area SMR capacity must be devoted to its own internal dispatch needs. This factor would make it even more difficult for Southern to meet the daily demand of its subscribers as well as provide reserve capacity for resellers.

11. Additionally, due to the lack of SMR frequencies, a reseller potentially could never become a facilities-based competitor unless it buys another SMR system. Under this scenario, the resale obligations would never cease under the proposed rules. This should not be the Commission's intended result. Based on technical impracticality and infeasibility, Southern urges the Commission not to impose resale obligations on interconnected SMR providers.

II. CMRS-to-CMRS Interconnection Should Be Deployed on a Service-by-Service Basis

12. The Commission seeks data and analysis to show that interconnection is important to the economic viability of CMRS providers. Southern believes that the record before the Commission does not dispute that CMRS-to-CMRS interconnection is a necessary element for universal service. The Commission itself acknowledges this.<sup>10/</sup> Once the "network of networks" is created, more consumers will be attracted to the CMRS marketplace thus improving the economic viability for all CMRS providers. This cannot be accomplished, however, in one regulatory step. Rather, as Southern advocated in the initial stage of this proceeding, the Commission should proceed with a service-by-service approach to full CMRS interconnection.<sup>11/</sup> One existing CMRS already has interconnection obligations (i.e., the cellular industry). Southern suggests that the Commission first impose interconnection obligations on existing CMRS on a service-by-service basis. Once the technical problems are resolved between "like" services, only then can the Commission advance to full CMRS-to-CMRS interconnection. Accordingly, Southern agrees with the Commission's

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<sup>10/</sup> Second NPRM at 16, ¶ 28.

<sup>11/</sup> Comments of Southern at 4-5.

assessment that it is too premature to impose general interstate interconnection obligations on all CMRS providers at this time.

13. Southern believes, however, that the Commission can move forward by adopting a general policy on SMR-to-SMR interconnection by addressing roaming arrangements. Roaming is an integral part of interconnection, and cannot be omitted when discussing interconnection. As advocated in the initial stage of this proceeding, Southern urges the Commission to require wide-area SMR licensees to enter into roaming agreements with adjacent wide-area SMR market licensees under reasonable terms. A licensee who refuses to enter into a roaming agreement with another licensee, charges exorbitant fees or insists on unreasonable terms for roaming capability should be subject to the Title II complaint and hearing process under Sections 208 and 201. Until the technology is fully capable of deploying CMRS-to-CMRS interconnection, including technology to facilitate user roaming, the Commission should adopt a general policy mandating roaming arrangements for wide-area SMRs in the meantime. Southern urges the Commission to stand ready to enforce its Title II regulations and intervene should a complaint arise. This suggestion is no different from that being proposed by the Commission now for interconnection

generally.<sup>12/</sup> Southern seeks a broadening of this proposal to encompass SMR-to-SMR roaming arrangements.

### CONCLUSION

14. The Commission must exercise its discretion to abstain from applying Title II regulations which are inapplicable to the SMR service. Recognizing the distinctions between the interconnected SMR (dispatch) and other CMRS markets, the Commission should not impose resale obligations on SMR licensees. Finally, the Commission should include roaming in its general policy for interconnection, making denial to enter into a roaming agreement, unreasonable terms or costly charges for such arrangement factors which trigger the Title II complaint and hearing processes.

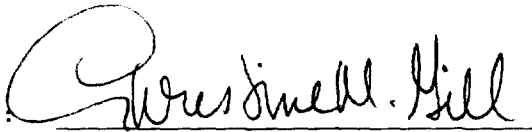
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<sup>12/</sup> See, Second NPRM at 20-23.

**WHEREFORE, THE PREMISES CONSIDERED,** The Southern Company respectfully requests that the Commission act upon its Second Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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